

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

JOINT PETITION FOR ARBITRATION OF	)	
NEWSOUTH COMMUNICATIONS CORP.,	)	CASE NO.
NUVOX COMMUNICATIONS, INC., KMC	)	2004-00044
TELECOM V, INC., KMC TELECOM III LLC,	)	
AND XSPEDIUS COMMUNICATIONS, LLC ON	)	
BEHALF OF ITS OPERATING SUBSIDIARIES	)	
XSPEDIUS MANAGEMENT CO. SWITCHED	)	
SERVICES, LLC, XSPEDIUS MANAGEMENT	)	
CO. OF LEXINGTON, LLC, AND XSPEDIUS	)	
MANAGEMENT CO. OF LOUISVILLE, LLC	)	

O R D E R

NewSouth Communications Corp., NuVox Communications, Inc., KMC Telecom V, Inc. and KMC Telecom III LLC, and Xspedius Communications, LLC, on behalf of its operating subsidiaries Xspedius Management Co. Switched Services, LLC, Xspedius Management Co. of Lexington, LLC, and Xspedius Management Co. of Louisville (collectively, the “Joint Petitioners” or “CLECs”) filed with the Commission a joint petition for arbitration seeking resolution of 107 issues arising between the Joint Petitioners and BellSouth Telecommunications, Inc. (“BellSouth”). BellSouth answered the petition and filed a motion to sever or to impose procedural restrictions. The CLECs have filed a motion for a procedural schedule. The parties agree that the statutory deadline for Commission determination of issues to be arbitrated is November 30, 2004.

Joint Petitioners object to the motion to sever, asserting that they have been negotiating with BellSouth as a group. They wish to proceed jointly in order to maximize

their resources and bargaining power as well as to create efficiencies for the Commission. According to the CLECs, of the 107 issues for which they seek arbitration, only 10 are not common to all of the parties. The CLECs, moreover, assert that no CLEC has taken a position adverse to the position of any other CLEC.

In its motion to sever or impose procedural restrictions, BellSouth argues that if this proceeding is not severed, then the following procedures must be imposed: (1) the CLECs' position must be the same on each issue; (2) the CLECs must be restricted to cross-examining each BellSouth witness only once; and (3) the CLECs must be limited to one witness per issue or sub-issue.

In their response, the Joint Petitioners assert that they agree with two of BellSouth's proposed procedural rules. The CLECs state they have jointly adopted a position statement on each issue to be arbitrated; thus, their positions are similar. They also agree to cross-examine each of BellSouth's witnesses only once. Joint Petitioners assert, however, that they cannot agree to be limited to one witness per issue, but are willing to file consolidated and integrated joint testimony encompassing all testimony on all issues. Thus, the only point of contention regarding the procedural requests of BellSouth is whether the Joint Petitioners may file consolidated joint and company-specific testimony.

Having carefully reviewed the parties' filings, the Commission finds that BellSouth's motion to sever should be denied, but the motion to restrict procedures should be granted in part, to the extent set forth herein. Because of the commonality of nearly 100 issues to be arbitrated among four requesting carriers, the Commission finds that a joint proceeding is reasonable. The Telecommunications Act, at 47 U.S.C.

§ 252(g), provides that a state commission may, to the extent practical, consolidate proceedings to reduce administrative burdens on telecommunications carriers and on the Commission itself. Therefore, the CLECs shall coordinate cross-examination so that each BellSouth witness is cross-examined only once. However, while the Commission encourages the filing of joint testimony, it will not require it. The individual parties' witnesses shall be identified, and the CLECs shall ensure that testimony is not repetitive or cumulative. Further, the Commission does not contemplate at this time that a team approach to taking the witness stand will be permitted. Instead, BellSouth will be permitted to cross-examine each party, CLEC by CLEC.

The Joint Petitioners' motion for a procedural schedule appears moot in light of the Joint Petitioners' letter advising the Commission that the agreed-upon deadline is November 30, 2004, and the scheduling of the June 17, 2004 informal conference. The Commission encourages the parties to continue good faith negotiations and attempt to resolve as many issues as possible prior to the June 17, 2004 informal conference. A procedural schedule will be entered after the June 17, 2004 informal conference.

IT IS THEREFORE ORDERED that:

1. BellSouth's motion to sever is denied.
2. BellSouth's motion to put into place certain procedural restrictions is granted to the extent described herein.
3. The Joint Petitioners' motion for a procedural scheduled is denied as moot.

Done at Frankfort, Kentucky, this 2nd day of June, 2004.

By the Commission

ATTEST:

  
Executive Director

Case No. 2004-00044